

STATE OF MICHIGAN
COURT OF APPEALS

JOHN J. MORAD,

Plaintiff/Counterdefendant-
Appellee,

v

STEVEN M. CABADAS,

Defendant/Counterplaintiff-
Appellant.

UNPUBLISHED

January 11, 2005

No. 245976

Oakland Circuit Court

LC No. 01-031987-CK

Before: Cavanagh, P.J., and Jansen and Fort Hood, JJ.

MEMORANDUM.

Defendant appeals as of right from a judgment for plaintiff. We reverse.

This litigation arises from an agreement between the parties to share attorney fees earned by defendant in exchange for plaintiff paying some or all costs incurred in a multiparty case involving employment discrimination claims against Rockwell International Corp. Plaintiff learned of the potential litigation through a human resources employee and referred the matter to defendant, who represented that he was proficient in that area of law. Plaintiff advanced \$53,382.39 for some, but not all of the costs, of the litigation. Ultimately, only four employees recovered monetary compensation through settlement. The parties disputed the entitlement to and amount of any referral fee, particularly in light of the fact that plaintiff did not pay all costs. The trial court concluded that the parties' agreement violated public policy, but granted judgment for plaintiff based on the theory of unjust enrichment.

We review a trial court's decision addressing equitable issues de novo, although the trial court's findings of fact are reviewed for clear error. *Eller v Metro Industrial Contracting, Inc.*, 261 Mich App 569, 571; 683 NW2d 242 (2004). In the present case, the trial court did not err in determining that the parties' fee-sharing agreement was unenforceable and void as against public policy. The agreement violated MRPC 1.5(e), which provides that a division of a fee between lawyers who are not in the same firm may be made only if the client is advised and does not

object and the total fee is reasonable.¹ Our Legislature has delegated the determination of “public policy” with regard to the activities of the State Bar to the judiciary. *Morris & Doherty, PC v Lockwood*, 259 Mich App 38, 58; 672 NW2d 884 (2003), citing MCL 600.904. Contracts containing performance requirements that would violate the MRPC are not enforceable because such contracts contradict Michigan’s public policy. *Id.*; *Evans & Luptak, PLC v Lizza*, 251 Mich App 187, 194-197; 650 NW2d 364 (2002). The equitable claim of unjust enrichment cannot be imposed where there is an express, albeit unenforceable, contract covering the same subject matter. See *Belle Isle Grill Corp v Detroit*, 256 Mich App 463, 478; 666 NW2d 271 (2003). A contract, contrary to public policy, will not be enforced, and the parties are left in the position in which they have placed themselves. *Cook v Wolverine Stockyards Co*, 344 Mich 207, 209; 73 NW2d 902 (1955).²

Reversed.

/s/ Michael J. Cavanagh

/s/ Kathleen Jansen

/s/ Karen M. Fort Hood

¹ Although the first contingent fee agreement set forth the names of both parties, it did not disclose the relationship and the nature of any fee sharing.

² In light of our disposition of this issue, we need not address the remaining issues raised on appeal.